

Planning Act (Section 42) Reserve Funds Statement, 2016-2019

Date: June 1, 2021

To: Budget Committee and Executive Committee

From: General Manager, Parks, Forestry and Recreation

Wards: All

SUMMARY

This report provides a financial statement of *Planning Act* (Section 42) reserve funds for the fiscal years 2016, 2017, 2018 and 2019. It documents contributions, spending and financial activity associated with cash-in-lieu of parkland dedication payments secured through Section 42, and satisfies the requirement for a public report on these matters.

Section 42 of the *Planning Act* allows municipalities to require that land be conveyed for parkland as a condition of development or redevelopment. If Council deems lands to be unsuitable for parks, municipalities may accept cash-in-lieu of parkland equal to the value of the land that would otherwise be conveyed. Cash-in-lieu is received¹ and held in reserve funds for the purpose of parkland acquisition or development.

Cash-in-lieu of parkland dedication is a fundamental funding tool for the City. On average, it accounts for roughly 30 per cent of PFR's annual capital budget and is the predominant source of funding for the City's parkland acquisition program.

Bill 108 (*More Homes, More Choice Act*), introduced by the Province in May 2019, created uncertainty around the status of the parkland dedication provisions in the *Planning Act*. With the enactment of the *COVID-19 Recovery Act, 2020* (Bill 197) on July 21 2020, the Province confirmed that the authorities granted through Section 42, including the ability to collect cash-in-lieu of parkland dedication, will continue to be available to municipalities.

Since 2016, the *Planning Act* has required municipalities to report on the status of Section 42 reserve funds. On September 18, 2020, Ontario Regulation 509/20 came into force, establishing an ongoing requirement for annual public reporting on *Planning Act* reserve fund activity. Staff will report on the status of Section 42 reserve funds for 2020 and 2021, and will then report annually according to the requirements of the new regulation, in consideration of annual reserve fund reporting processes.

¹ "Funds received" refers to funds that are available to be spent by the City. It does not include collections under protest, which are held in a separate account and are not spent by the City until the matters are resolved.

RECOMMENDATIONS

The General Manager, Parks, Forestry and Recreation recommend that:

1. City Council receive this report for information.

FINANCIAL IMPACT

Section 42 funding for capital acquisitions and park development is reflected in the City's 10 year Capital plan. There are no changes to the capital plan arising from this report.

From 2016 to 2019, the City received a total of \$439,891,231 cash-in-lieu of parkland dedication payments ("cash-in-lieu") as part of planning approvals, generated through 1,504 developments city-wide. During the same period, the City spent a total of \$172,267,208 from cash-in-lieu funds on 707 park acquisition and development projects.

As of December 31, 2019, the City held \$644,969,273 in cash-in-lieu reserve funds designated for the acquisition of parkland and the development of park and recreation facilities. Of this, \$407,349,061 (approximately 63 per cent) was allocated to fund parks and recreation projects as approved by City Council in the 2020-2029 Parks, Forestry and Recreation (PFR) Capital Budget and Plan. Additional reserve funds have been applied to projects in the 2021-2030 Capital Budget and Plan and these commitments will be reflected in future reporting on the status of Section 42 reserve funds.

Detailed financial information, including cash-in-lieu received, spending, and reserve fund transactions, is outlined in the attachments. Staff from Financial Planning have reviewed and indicated their concurrence with this report and its attachments.

DECISION HISTORY

At its meeting June 8 and 9, 2010, City Council adopted principles that form the current city-wide parkland dedication by-law (MC 415) which came into effect May 3, 2011.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2010.EX44.5>

On July 1, 2016 multiple *Planning Act* amendments were enacted resulting from the *Smart Growth for Our Communities Act, 2015*. This included a requirement for municipalities to provide an annual financial statement from the municipal Treasurer in relation to special accounts (reserve funds) holding cash-in-lieu.

On April 19, 2017, the Executive Committee considered a report, requested by the Committee, summarizing the City's Cash-In-Lieu Allocation Policy, the status of *Planning Act* Section 42 cash-in-lieu funding for parkland for the previous 10 years, and the projected cash-in-lieu funds for the following five years.

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.EX24.9>

On June 6, 2019, the *More Homes, More Choice Act* (Bill 108) was approved which revoked Section 42 of the *Planning Act*. This change did not come into force. With the passage of the *COVID-19 Recovery Act* (Bill 197) on July 21, 2020, the Province clarified that Section 42 of the *Planning Act*, including the collection of cash-in-lieu of parkland dedication, will continue to be a tool available to municipalities.

On September 18, 2020, Ontario Regulation 509/20 was enacted which establishes, among other things, an ongoing requirement for a report to be provided to the public each year regarding *Planning Act* Section 42 reserve fund activity.

ISSUE BACKGROUND

Section 42 of the Planning Act

Section 42 of the *Planning Act* deals with conveyance of land for park purposes. It allows the Council of a municipality to pass a by-law, with respect to all or part of a municipality, to require land to be conveyed for park or recreation purposes as part of development or redevelopment. The legislation sets out a "base rate" of 2 per cent for commercial or industrial development and 5 per cent for all other development.

The legislation also sets out that, for residential development, a municipality may pass a by-law requiring conveyance at an alternative rate not greater than 1 hectare for each 300 dwelling units. To use an alternative rate, a municipality must complete a parks plan examining the need for parkland and must pass Official Plan policies to guide provision of land for parks or other recreation purposes and use of the alternative rate.

Cash-in-lieu of parkland collection and reporting requirements

Section 42 (6) of the *Planning Act* allows a municipality to require cash-in-lieu of parkland conveyance, equal to the value of the land that would otherwise be conveyed, in situations where Council deems land unsuitable for conveyance as a park. If an alternative rate by-law is in place, then a municipality may require cash-in-lieu at a rate not greater than the equivalent value of 1 hectare for each 500 dwelling units.

Cash-in-lieu is to be received and held in a special account for the purposes of parkland acquisition or development. The special account is to include all cash-in-lieu funds received, plus any money received on the sale of land conveyed for park purposes.

As of 2016, Section 42 (17) of the *Planning Act* requires municipalities to report annually on the status of the special account. Ontario Regulation 509/20 establishes that the following information is to be provided to the public each year:

- Opening and closing balance of the special account and related transactions.
- Statements of land or machinery acquired and buildings erected, improved or repaired during the preceding year using funds from the special account.
- Details of the amounts spent for each undertaking.
- How capital costs not funded from the special account were or will be funded.
- The amount of money borrowed from the special account, the purpose for which it was borrowed, and the amount of any interest accrued on this money.

Toronto's Alternative Rate and Cash-in-Lieu Policies

Toronto's Alternative Rate Policy, established in Policy 3.2.3.5 of the City's Official Plan and in effect since January 1, 2008, requires the conveyance of 0.4 hectares of parkland per 300 dwelling units. This Alternative Rate is subject to caps based on the size of the development site: 10 per cent of site size for sites less than 1 hectare, 15 per cent of site size for sites 1 to 5 hectares, and 20 per cent of site size for sites larger than 5 hectares.

As set out in the current city-wide parkland dedication by-law, the Alternative Rate applies only to residential development in areas with identified parkland need, in accordance with the parks and open spaces policies of the Official Plan. In all other areas, the *Planning Act* base rates apply. The areas of the city to which the Alternative Rate applies are identified in the Toronto Municipal Code Chapter 415 Article III.

Policies 3.2.3.5 f) and g) of the Official Plan prioritize land conveyance, especially for sites larger than 1 hectare, but allow for payment of cash-in-lieu where conveyance is not feasible. The value of required cash-in-lieu payments is capped using the same site-size thresholds that apply to conveyance.

Cash-in-lieu funds received by the City are deposited into Reserve Fund Accounts, listed in Attachment 1, and are to be spent according to the Council-approved Cash-in-Lieu Allocation Policy.

Cash-in-Lieu of Parkland Allocation Policy

The Cash-in-Lieu Allocation Policy directs that the first 5 per cent of cash-in-lieu funds ("First 5%") be divided equally between city-wide projects and projects within the district (West, East, North, South) where the development is located. These allocations are further divided equally between land acquisition and park and facility development. The Policy is summarized in Table 1.

If a development is located in an area of the city where the Alternative Rate applies, then cash-in-lieu payments received in excess of 5 per cent ("Above 5%") are used to acquire or develop parkland or facilities in the vicinity of the development.

Table 1: City of Toronto Cash-in-lieu of Parkland Allocation Policy

	Cash-in-lieu Allocation (5% or below)		Alternative Rate Cash-in-lieu Allocation (above 5%)
	City Wide	District	
Land Acquisition	25%	25%	Acquire parkland <i>accessible to</i> the area in which the development is located
	Acquire parkland throughout the City	Acquire parkland within the District	
Park Development	Parkland Acquisition Reserve Funds		Improve parks <i>within the vicinity</i> of the development
	25%	25%	
	Develop and upgrade parks and recreation facilities throughout the City	Develop and upgrade parks and recreation facilities within the District	Alternative Parkland Dedication Reserve Fund (tracked by Ward)
Parkland Development Reserve Funds			

Importance of cash-in-lieu and priorities for allocation

On average, roughly 30 per cent of PFR's 10-year Capital Budget and Plan and almost all funding for parkland acquisition comes from Section 42 cash-in-lieu. Other sources of funding include: development charges, debt, donations, contributions from other divisions, and funds secured under Sections 37 and 45 of the *Planning Act*.

Examples of project categories identified in PFR's 10-year Capital Budget and Plan are:

- Land acquisition for park purposes.
- Park developments, revitalizations, and outdoor recreation facilities such as playgrounds, splash pads, tennis courts, artificial ice rinks and skating trails.
- Facility-related projects such as new community recreation centres and expansions, arenas and ice facilities, and pools.
- Other assets such as golf courses and ski hills.

PFR has two major Council-approved strategic plans that guide allocation of cash-in-lieu of parkland. The Parks and Recreation Facilities Master Plan, 2019-2038, approved by Council in November 2017, outlines parks and recreation capital projects needed to serve the City's growing population and address service gaps over the next 20 years. The Parkland Strategy, approved by Council in November 2019, identifies current parkland provision rates, areas of the city that are deficient in parkland, and principles to guide parkland acquisition and improvements.

A key trend identified in the Parkland Strategy is the declining provision of parkland per person over time. Staff are actively pursuing a number of strategic acquisitions to address this need, in combination with parkland conveyances and transfers. Ongoing investments in existing parkland, in part funded through Section 42 funds, maximize the utility of existing parks and help to address the pressures of a growing and diversifying population.

As detailed in the City's 2021 Budget Notes, the cost to deliver the recreation projects and acquire the parkland needed to serve the City's growth exceeds available funding.

Reserve fund balances

Reserve fund balances comprise both "committed" and "uncommitted" funds. The majority of the City's cash-in-lieu reserves are "committed" to fund projects identified in PFR's 10-year Capital Budget and Plan. Typically, funds received and deposited in the City's "First 5%" reserve funds are fully allocated through the annual budget process.

A portion of the City's cash-in-lieu reserves held in "Above 5%" reserve funds are "uncommitted". These funds must be used to acquire or develop parkland or facilities in the vicinity of the development. As projects are identified that satisfy this requirement and support implementation of the Facilities Master Plan and Parkland Strategy, "uncommitted" Above 5% funds are applied to future capital plans as "committed funds".

There will always be a balance of uncommitted cash-in-lieu funds for several reasons:

- There is often a lag between when cash-in-lieu payments are received, and when the funds can be allocated through the annual capital budget process.
- Given the cost of land, which may exceed \$60 million per acre in some areas, the City needs to "save up" sufficient funds over time to purchase land. Reserve fund balances could be exhausted very quickly in the current land market.
- Protracted negotiation and settlement processes related to some parkland acquisitions often result in spending being deferred to future years.
- Maintaining some uncommitted parkland reserve funds gives the City flexibility to pursue strategic acquisition opportunities that respond to demand for parkland generated by a specific development or cluster of developments, which may arise outside the context of the annual budget process.

COMMENTS

Cash-In-Lieu Funds Received from 2016 to 2019

From January 1, 2016 to December 31 2019, the City of Toronto received a total of \$439,891,231 cash-in-lieu payments from 1,504 developments city-wide. Of these, 629 developments generated an Above 5% payment in addition to the First 5% payment. Funds were allocated according to the City's Cash-in-Lieu Allocation Policy as summarized in Table 2. Details are listed in Attachment 2.

Table 2: Summary of Section 42 Cash-in-lieu Received from January 1, 2016 to December 31, 2019 (\$)

	First 5%		Above 5%	Total (all streams)
	Parkland Acquisition	Parkland Development		
2016	13,211,483	12,840,888	26,956,797	53,009,168
2017	22,388,739	22,196,289	32,971,399	77,556,427
2018	53,277,864	51,654,662	99,871,579	204,804,105
2019	31,186,033	31,186,033	42,149,465	104,521,531
Total Received 2016-2019	120,064,119	117,877,871	201,949,241	439,891,231

Cash-In-Lieu Funds Spent from 2016 to 2019

From January 1, 2016 to December 31, 2019, the total of cash-in-lieu funds spent by the City was \$172,267,208. Funds were spent on 707 parkland acquisition and development projects identified through PFR's Council-approved 10-Year Capital Budget and Plan. This information is summarized in Table 3. Details of spending can be found in Attachments 3, 4 and 5.

Table 3: Summary of Cash-in-lieu Expenditures for Parkland Acquisition and Development from January 1, 2016 to December 31, 2019 (\$)

	First 5%		Above 5%	Total (all streams)
	Parkland Acquisition	Parkland Development		
2016	6,360,917	18,781,544	17,515,727	42,658,188
2017	5,815,761	26,964,745	14,007,319	46,787,825
2018	13,355,149	22,563,317	14,166,729	50,085,195
2019	2,178,032	21,832,843	8,725,125	32,736,000
Total Expenditures 2016-2019	27,709,859	90,142,449	54,414,900	172,267,208

Reserve Fund Balances as of December 31, 2019

As of December 31, 2019, the balance of cash-in-lieu reserve funds was \$644,969,273. These funds are designated for the acquisition of parkland and the development of park and recreation facilities, as summarized in Table 4. Attachments 6 and 7 provide details of reserve fund financial activity over this time period.

Over 63 per cent of these funds are committed to projects identified through PFR's 2020-29 Capital Budget and Plan.

Table 4: Summary of Balances for all Parkland Reserve Funds as of December 31, 2019

Account	Balance in Accounts as of Dec 31, 2019	Commitments in 2020-2029 Capital Plan*	Uncommitted Balance
Section 42 CIL First 5%			
Parkland Acquisition	239,960,699	225,522,259	14,438,440
Parkland Development	118,585,012	102,863,812	15,721,200
Subtotal (First 5%)	358,545,711	328,386,071	30,159,640
Section 42 CIL Above 5%	286,423,562	78,962,990	207,460,572
Total (First & Above 5%)	644,969,273	407,349,061	237,620,212

*Commitments are as of 2020 Q3 variance report

Uncommitted Cash-in-lieu Reserve Fund Balance

As shown in Table 4, there is an uncommitted cash-in-lieu reserve fund balance of roughly \$237.6 million as of December 31, 2019 (approximately 37 per cent of total cash-in-lieu reserves).

Funds received and deposited in the Parkland Development reserve accounts are typically fully committed through the annual budget process. The balance in these

reserve fund accounts as of December 31, 2019 represents cash-in-lieu contributions that exceed what was projected in the 2020-29 Capital Budget and Plan.

The difference between projected and actual cash-in-lieu received reflects forecasting uncertainty arising from Bill 108, which proposed to revoke Section 42 and fund parks-related projects through the community benefits charge (classified as "Unapplied Capital Financing" in the 2020 and 2021 PFR Budget Analyst Notes).

Under the *COVID-19 Recovery Act*, Section 42 was maintained. Uncommitted funds in the First 5% reserve fund accounts have been applied to projects in the 2021-2030 Capital Budget and Plan. These commitments will be reflected in future reporting on the status of Section 42 reserve funds.

The majority (approximately 87 per cent) of the City's uncommitted cash-in-lieu reserves are held in the Above 5% Reserve Fund. These funds will be allocated to acquire parkland and deliver recreation facilities consistent with the needs and priorities identified in the Parkland Strategy and the Facilities Master Plan, and according to the Council-approved Cash-in-Lieu Allocation Policy.

Collections under protest

The City's cash-in-lieu reserve funds form part of the balance of the City's obligatory reserve funds, which are classified as "deferred revenue" (a liability) in the City's financial statements. The City has received roughly \$50 million in cash-in-lieu payments that are currently under protest, which are held in a separate deferred revenue account. As the protests are settled, the affected cash-in-lieu payments are recognized into revenue once the associated performance obligations have been satisfied, which is consistent with the accounting treatment of non-protested amounts, or are refunded to developers.

Money borrowed from Section 42 reserve fund accounts and interest accrued

No funds were borrowed from Section 42 reserve fund accounts from 2016 to 2019 and, as such, no related interest was accrued.

Future of Section 42 Cash-in-Lieu of Parkland Dedication

Cash-in-lieu of parkland dedication has and will continue to be a fundamental tool for the City of Toronto to deliver new and improved parkland and recreation facilities.

Efforts to secure parkland through purchase rather than conveyance are challenged by a number of factors including rising land values, restrictions under the *City of Toronto Act* that limit the City's ability to compete with private purchasers, and additional costs incurred by the City through a purchase.

At the same time, the trend toward smaller, more intense development sites means that adequate parkland cannot be delivered through conveyance alone and also requires strategic acquisitions. Small sites (less than 1 hectare) make up approximately 90 percent of development sites in the City's Centres and more than three quarters of sites city-wide. These high-density development sites are generally too small to generate

sufficient land for conveyance as a functional or programmable park and do not address the City's need for larger parks. This increases the City's reliance on strategic acquisitions supported by cash-in-lieu.

Enactment of the *COVID-19 Economic Recovery Act* (Bill 197) and associated regulations confirmed that municipalities can continue to collect cash-in-lieu. However, the changes also stipulate that the City's existing Alternative Rate will expire in less than 16 months. The City will need to enact a new by-law before September 18, 2022, in order to continue collecting cash-in-lieu in accordance with the alternative rate provided for in the *Planning Act*.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment 1: List of Cash-in-Lieu of Parkland Dedication Reserve Fund Accounts

Attachment 2: Summary of Cash-in-lieu Received, 2016-2019, First 5% and Above 5%

Attachment 3: Summary of Cash-in-lieu Expenditures, 2016-2019, First 5% and Above 5%

Attachment 4a: Expenditures from First 5% Cash-in-lieu Reserve Funds, Breakdown by Project (Parkland Acquisition)

Attachment 4b: Expenditures from First 5% Cash-in-lieu Reserve Funds, Breakdown by Project (Parkland Development)

Attachment 5: Expenditures from Above 5% Cash-in-lieu Reserve Funds, Breakdown by Project

Attachment 6: Financial Activity, 2016-2019, First 5% Reserve Funds

Attachment 7: Financial Activity, 2016-2019, Above 5% Reserve Fund

Attachment 1:

List of Cash-in-lieu of Parkland Dedication Reserve Fund Accounts

The following list of City of Toronto cash-in-lieu of parkland dedication reserve fund accounts reflects a mixture of accounts in place prior to amalgamation in 1998 and accounts set up post amalgamation, from 2004 onward.

Pre-amalgamation, cash-in-lieu funds allocated for "district" use were held in accounts for Etobicoke, York, Toronto, Scarborough, East York and North York. Currently, district funds are held in accounts for West, East, North and South.

	City-Wide Accounts	District Accounts
First 5% Reserve Funds		
Land Acquisition	XR2210 XR2003 XR2035 XR2039 XR2043 XR2047 XR2051 XR2055 XR2216	ETOBICOKE XR2002, XR2037
		YORK XR2045
		TORONTO XR2005, XR2053
		SCARBOROUGH XR2007, XR2049
		EAST YORK XR2001, XR2033
		NORTH YORK XR2004, XR2008, XR2041
		WEST XR2202
		EAST XR2204
		NORTH XR2206, XR2214, XR2217
		SOUTH XR2208
		Park Development
YORK XR2046		
TORONTO XR2054		
SCARBOROUGH XR2050		
EAST YORK XR2034		
NORTH YORK XR2042		
WEST XR2203		
EAST XR2205		
NORTH XR2207, XR2212		
SOUTH XR2209		
Above 5% Reserve Funds	XR2213 (tracked by Ward)	